



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD

CHICAGO, IL 60604-3590

APR 20 2018

REPLY TO THE ATTENTION OF:

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Paul Wolfe
RC Transportation LLC.
1100 Independence Ave.
Evansville, Indiana 47714

Re: Finding of Violation for Clean Air Act Violations

Dear Mr. Wolfe:

The U.S. Environmental Protection Agency is issuing the enclosed Finding of Violation (FOV) to RC Transportation LLC (RC or you) for violating the Clean Air Act (CAA), 42 U.S.C. §§ 7401-7671q, and its implementing regulations. As summarized in the attached FOV, EPA determined that RC has removed and/or rendered inoperative devices or elements of design installed on or in motor vehicles or motor vehicle engines, and has installed parts or components for motor vehicles or motor vehicle engines that bypass, defeat, or render inoperative elements of design of those engines that were installed by the original equipment manufacturer in order to comply with CAA emission standards. Therefore, RC violated Section 203(a)(3)(A) and (B) of the CAA, 42 U.S.C. §§ 7522(a)(3)(A) and (B).

We are offering you an opportunity to confer with us about the violations alleged in the FOV. The conference will give you an opportunity to present information on the specific findings of violation, any efforts you have taken to comply and the steps you will take to prevent future violations. In addition, in order to make the conference more productive, we encourage you to submit to us any information responsive to the FOV prior to the conference date.

Please plan for your facility's technical and management personnel to attend the conference to discuss compliance measures and commitments. You may have an attorney represent you at this conference.

The EPA contact in this matter is Sarah Clark. You may call her at (312) 886-9733 to request a conference. You should make the request within 10 calendar days following receipt of this letter. We should hold any conference within 30 calendar days following receipt of this letter.

Sincerely,

A handwritten signature in black ink, appearing to read "Edward Nam", with a long horizontal flourish extending to the right.

Edward Nam
Director
Air and Radiation Division

Enclosure

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

IN THE MATTER OF:

RC Transportation LLC
Evansville, Indiana

Proceedings Pursuant to
The Clean Air Act,
42 U.S.C. §§ 7401–7671q

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FINDING OF VIOLATION

EPA-5-18-IN-03

FINDING OF VIOLATION

The U.S. Environmental Protection Agency (EPA) is issuing this Finding of Violation to RC Transportation LLC (RC) for violating the Clean Air Act (CAA), 42 U.S.C. §§ 7401–7671q, and its implementing regulations.

Statutory and Regulatory Background

1. Title II of the CAA was enacted to reduce air pollution from mobile sources. In enacting the CAA, Congress found, in part, that “the increasing use of motor vehicles...has resulted in mounting dangers to the public health and welfare.” CAA § 101(a)(2), 42 U.S.C. § 7401(a)(2). Congress’ purpose in enacting the CAA included “to protect and enhance the quality of the Nation’s air resources so as to promote the public health and welfare and the productive capacity of its population,” and “to initiate and accelerate a national research and development program to achieve the prevention and control of air pollution.” CAA § 101(b)(1)–(2), 42 U.S.C. § 7401(b)(1)–(2).
2. EPA promulgated emission standards for particulate matter (PM), nitrogen oxides (NO_x), and other pollutants applicable to motor vehicles and motor vehicle engines, including diesel Heavy Duty Engines (diesel HDEs), under Section 202 of the CAA, 42 U.S.C. § 7521. See generally 40 C.F.R. Part 86.
3. EPA promulgated regulations that require every new motor vehicle or new motor vehicle engine manufactured for sale, sold, offered for sale, introduced, or delivered for introduction to commerce, or imported into the United States for sale or resale, which is subject to the emission standards prescribed under Section 202 42 U.S.C. § 7521 (40 C.F.R. Part 86), be covered by a certificate of conformity. See 40 C.F.R. § 86.090-5. 54 Fed. Reg. 14460, April 11, 1989 and amendments.
4. Motor vehicle and motor vehicle engine manufacturers employ many devices and elements of design to meet emission standards. *Element of design* means “any control system (i.e., computer software, electronic control system, emission control system, computer logic), and/or control system calibrations, and/or the results of systems interaction, and/or hardware items on a motor vehicle or motor vehicle engine.” See 40 C.F.R. § 86.094-2.

5. To meet the emission standards in 40 C.F.R. Part 86, and qualify for a certificate of conformity, diesel HDE manufacturers may utilize control devices or elements of design such as Diesel Particulate Filter (DPF), Exhaust Gas Recirculation (EGR), and/or Selective Catalytic Reduction (SCR) systems.
6. Diesel HDEs manufacturers may also employ retarded fuel injection timing as a primary element of design to limit emissions of oxides of nitrogen (“NOx”). EPA, *Heavy-duty Diesel Engines Controlled by Onboard Computers*, VPCD-98-13, at 4 (Oct. 15, 1998); *see also* 59 Fed. Reg. 23,264 at 23,418 (May 5, 1994) (“[I]njection timing has a very significant impact on NOx emission rates, with advanced timing settings being associated with higher NOx ...”); *id* at 23,380–81 (“A feasible and simple means of reducing NOx from diesel engines is by retarding injection timing...”).
7. Modern motor vehicles and engines are equipped with electronic control modules (“ECMs”). ECMs continuously monitor engine and other operating parameters and control the emission control devices and elements of design, such as the DPF, EGR, SCR systems and the engine fueling strategy.
8. EPA promulgated regulations for diesel HDEs installed in heavy duty vehicles at or below 14,000 GVWR manufactured after 2007 and diesel HDEs installed in heavy duty vehicles above 14,000 GVWR manufactured after 2010 that require the use of Onboard Diagnostic Systems to detect various emission control device parameters and monitor vehicle operations. See Section 202(m) of the CAA and 42 U.S.C. § 7521(m) and 40 C.F.R. §§ 86.1806-05, 86.010-18, 86.007-17. 65 Fed. Reg. 59965, October 6, 2000; 74 Fed. Reg. 8369, February 24, 2009; 79 Fed. Reg. 23688, April 28, 2014; and amendments.
9. Under Section 206(a) of the CAA, 42 U.S.C. § 7525(a), EPA may test, or require to be tested, any new motor vehicle or new motor vehicle engine submitted by a manufacturer to determine whether such vehicle or engine conforms with the applicable regulations prescribed under Section 202 of the CAA, 42 U.S.C. § 7521 (40 C.F.R. Part 86). If such vehicle or engine conforms to such regulations, EPA may issue a certificate of conformity to the vehicle or engine manufacturer. See 40 C.F.R. §86.007-30. 74 Fed. Reg. 8360, February 24, 2009, and amendments.
10. Section 203(a)(3)(A) of the CAA prohibits “any person to remove or render inoperative any device or element of design installed on or in a motor vehicle or motor vehicle engine in compliance with regulations under [Title II of the CAA] prior to its sale and delivery to the ultimate purchaser, or for any person knowingly to remove or render inoperative any such device or element of design after such sale and delivery to the ultimate purchaser.”
11. Section 203(a)(3)(B) of the CAA prohibits “any person to manufacture or sell, or offer to sell, or install, any part or component intended for use with, or as part of, any motor vehicle or motor vehicle engine, where a principal effect of the part or component is to bypass, defeat, or render inoperative any device or element of design installed on or in a

motor vehicle or motor vehicle engine in compliance with regulations under this subchapter, and where the person knows or should know that such part or component is being offered for sale or installed for such use or put to such use.”

Facility Background

12. RC owns and operates a fleet, that includes heavy-duty vehicles (*i.e.*, greater than 8,500 pounds gross vehicle weight rating) with diesel HDEs, for Royal Crown Bottling Corp. located in Evansville, Indiana.
13. RC is a person, as that term is defined in Section 302(e) of the CAA, 42 U.S.C. § 7602(e).
14. On May 31, 2017, EPA issued a CAA Section 208 Information Request to RC, addressed to the facility’s physical location. Since the original request was not received by RC, on September 6, 2017, EPA forwarded the Information Request to the facility’s P.O. Box.
15. On October 31, 2017, RC responded to EPA’s Information Request. In the response, RC provided information showing that since June 1, 2014, the company removed or rendered inoperative air pollution emission control systems on five HDE motor vehicles. The table below summarizes the modifications facilitated by RC:

Invoice Number, Date	Provider	Product	Vehicle/Engine	Modification	No. Vehicles
ORD-829031 9/25/2014	Hanak Enterprises Charlotte, NC	Detroit EGR Performance Module Series 60	2007 Freightliner Columbia Detroit Diesel Series 60	EGR delete	3
2562 4/17/2017	Diesel Up Newburgh, IN	SCT X4 4” CAT, DPF upgrade race pipe EGR upgrade	2011 Ford F250 Powerstroke	DPF delete EGR delete	1
Not provided	Not provided	Not provided	2011 Chevy 2500 Duramax Diesel	DPF delete	1

Violations

16. EPA finds that RC violated Section 203(a)(3)(A) of the CAA by knowingly removing and/or rendering inoperative the DPF, EGR, and/or OBD systems and tampering with the emissions-related elements of the ECM installed on five HDE motor vehicles in compliance with Title II of the CAA.
17. EPA finds that RC violated Section 203(a)(3)(B) of the CAA by installing parts and/or components where a principal effect of the part or component was to bypass, defeat or render inoperative the DPF, EGR, and/or OBD system and/or the emission-related

elements of the ECM installed on five HDE motor vehicles in compliance with Title II of the CAA, and knew or should have known that such parts and/or components were installed for such use or put to such use.

Environmental Impact of Violations

18. These violations have resulted in excess emissions of PM, NO_x, hydrocarbons, and other air pollutants.

- PM: Especially fine particulates containing microscopic solids or liquid droplets, which can get deep into the lungs and cause serious health problems. PM exposure contributes to:
 - irritation of the airways, coughing, and difficulty breathing;
 - decreased lung function;
 - aggravated asthma;
 - chronic bronchitis;
 - irregular heartbeat;
 - nonfatal heart attacks; and
 - premature death in people with heart or lung disease.
- NO_x: Current scientific evidence links short-term NO_x exposures, ranging from 30 minutes to 24 hours, with adverse respiratory effects including airway inflammation in healthy people and increased respiratory symptoms in people with asthma. In addition, studies show a connection between breathing elevated short-term NO_x concentrations and increased hospital admissions for respiratory issues, especially asthma.

Enforcement Authority

19. The EPA may bring an enforcement action for these violations under its administrative authority or by referring this matter to the United States Department of Justice with a recommendation that a civil complaint be filed in federal district court. CAA §§ 204 and 205, 42 U.S.C. §§ 7523 and 7524. Persons violating Section 203(a)(3) of CAA, 42 U.S.C. § 7522(a)(3), are subject to an injunction under Section 204 of CAA, 42 U.S.C. § 7523, and a civil penalty of up to \$4,619 for each violation. CAA § 205(a), 42 U.S.C. § 7524(a); 40 C.F.R. § 19.4.

Date

4/20/18

Edward Nam

Director

Air and Radiation Division

CERTIFICATE OF MAILING

I certify that I sent a Finding of Violation, No. EPA-5-18-IN-03, by Certified Mail,
Return Receipt Requested, to:

Paul Wolfe
RC Transportation LLC
1100 Independence Ave.
P.O. Box 2870
Evansville, Indiana 47728

On the 23rd day of April 2018.

Kathy Jones

Kathy Jones
Program Technician
AECAB, PAS

CERTIFIED MAIL RECEIPT NUMBER: 7009 1680 0000 7641 3398